

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36137

CITY OF FISHERS, CITY OF NOBLESVILLE, & HAMILTON COUNTY, IND.—PETITION
FOR PARTIAL REVOCATION OF EXEMPTION

Decided: September 22, 2017

On August 1, 2017, the Cities of Fishers and Noblesville, Ind., and Hamilton County, Ind. (collectively, Owners or Petitioners), filed a petition for partial revocation of an abandonment exemption granted in 1991 over a 37.56-mile rail line between Indianapolis, Ind., and Tipton, Ind. (the Line). The Petitioners state that partial revocation of the exemption would enable them to rail bank the Line pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), and the Board's interim trails use regulations, 49 C.F.R. § 1152.29.

On August 21, 2017, Linda Kraatz filed a request for a 180-day extension of the comment period on the petition in order to conduct research related to historical and environmental reports and obtain historic designation of the line, “find objective information” to support the conclusions in the petition, and “study and understand” the petition. (Kraatz Req. for Extension of Time 1-2.)

Also on August 21, 2017, the Hoosier Rails to Trails Council, Inc. (Hoosier Rails to Trails), requested a three-month extension of the comment period, arguing that an extension of time is necessary “for the Hoosier Rails to Trails Council, several other groups, and numerous citizens to enter comments and petitions opposing [the petition].” (Hoosier Rails to Trails Req. for Extension of Time 1.) Hoosier Rails to Trails also requests that the Board hold a field hearing on the petition in the Indianapolis area, “to give citizens their due time to express their views about [the petition].” (*Id.*)

On August 31, 2017, the Petitioners submitted a combined rebuttal and reply to the requests for an extension of time, along with a motion for leave to file.¹ In reply to the requests

¹ On September 12, 2017, Linda Kraatz submitted a motion to deny Petitioners' motion for leave to file rebuttal, arguing that the Board's rules do not specifically provide for rebuttal evidence. (Kraatz Mot. to Den. Mot. for Leave to File Rebuttal 1.) On September 13, 2017, Ms. Kraatz also submitted a motion to deny the petition. In the interests of a complete record, Ms. Kraatz's motion to deny Petitioners' motion for leave to file rebuttal will be denied, Petitioners' motion will be granted, and Petitioners' reply to the requests for extension of time and rebuttal will be accepted into the record. Petitioners' rebuttal arguments and Ms. Kraatz's motion to deny the petition will be addressed in a later decision.

for extensions of time, Petitioners argue that the Board should deny the requests and close the record because the comments filed thus far simply object to the Petitioners' rail banking efforts and "accuse the Owners of not affording the public sufficient notice and input into the decision-making process." (Pet'rs Reply 2-3.) Petitioners argue that allowing additional time for comments on these points "adds nothing to the relevant legal analysis—whether the Owners have demonstrated that the requested partial exemption is warranted under the applicable regulatory standards and agency policy—and would instead merely delay action on the [p]etition." (Id. at 3.)

On September 5, 2017, Brian Landress filed a comment in response to Petitioners' motion for leave to file a rebuttal and reply to the requests for an extension of time and rebuttal. Mr. Landress states that he supports Ms. Kraatz's request for a 180-day extension of the comment period. (Landress Comments 2.) Mr. Landress further argues that, if the Board accepts the Petitioners' rebuttal, "the public should be given sufficient time to evaluate the rebuttal and provide further comment accordingly." (Id.)

On September 15, 2017, the Petitioners submitted a request that the Board "impose order on this proceeding to limit or preclude the ongoing filing of reply comments and other filings." (Pet'rs Req. 1, Sept. 15, 2017.) The Petitioners alternatively request that the Board act promptly on the petition, and also request that comments filed "without due consideration for agency rules of procedure" be disregarded. (Id.)

Also on September 15, 2017, the Indiana Transportation Museum (ITM) filed a Notice of Pending Federal Litigation and Motion to File Amicus Curiae Statement/Brief in Opposition to the Petition (ITM Mot.), in which ITM advises the Board that there is pending litigation in the U.S. District Court for the Southern District of Indiana, and that there may be additional litigation between ITM and the Petitioners in the future. (ITM Mot. 1-2.) ITM requests the Board: (1) hold this proceeding in abeyance until October 20, 2017, or until further notice of the Board, to allow ITM "sufficient time to expedite" some of its litigation matters; (2) allow ITM to seek several types of relief in the state courts; (3) allow time for potential freight customers on the line to file service demands or intervene in this proceeding; and (4) conduct a field hearing. (Id. at 2-3.)

The requests for extensions of the comment period from Ms. Kraatz and the Hoosier Rails to Trails Council will be granted in part. A reasonable extension of the comment period will accommodate the demonstrated interest in this proceeding from the public while recognizing Petitioners' interest in not unduly delaying the Board's consideration of the petition. The time period for filing comments in reply to the petition therefore will be extended 20 days beyond the effective date of this decision, to October 12, 2017.² Petitioners may respond by October 23, 2017. No further comments filed after the relevant dates discussed here will be considered unless the Board approves an accompanying request for leave to late file.

² Parties may address Petitioners' August 31, 2017 rebuttal in their comments.

Because the Board is extending the comment period in this proceeding, all of the filings submitted thus far will be accepted into the record.³ As the Board is also providing time for Petitioners to respond, Petitioners will not be prejudiced by the Board's acceptance of these filings.

In addition, because the Board is extending the comment period beyond the date until which ITM requests abeyance, we will not address that request here. In the event the Board determines further abeyance relief is appropriate, the Board will address that relief in a future decision. With regard to ITM's other requests discussed above, interested persons, including ITM and any potential freight customers seeking to participate, may file further comments within the comment period described in this decision.

Additionally, at this time, the Board will not schedule a field hearing on the petition.

It is ordered:

1. Ms. Kraatz's motion to deny Petitioners' motion for leave to file a rebuttal is denied.
2. Petitioners' motion for leave to file a rebuttal is granted, and Petitioners' reply to the requests for extension of time and rebuttal is accepted into the record.
3. Ms. Kraatz's request for a 180-day extension of the comment period and the Hoosier Rails to Trails Council's request for a three-month extension of the comment period are granted in part, subject to the deadlines set out in this decision.
4. Reply comments on the petition are due by October 12, 2017.
5. Petitioners may file a response by October 23, 2017.
6. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

³ The arguments presented by commenters regarding the merits of the petition, including those presented in ITM's Motion to File an Amicus Curiae Statement, will be addressed in a separate decision.